

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>DALE SAEGER</b>	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,000,210
<b>OIX, INC.</b>	)	
Respondent	)	
AND	)	
	)	
<b>GREAT WEST CASUALTY COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Claimant appealed the February 11, 2002 Preliminary Hearing Order entered by Administrative Law Judge Bruce E. Moore.

**ISSUES**

This is a claim for an October 30, 2001 accident.<sup>1</sup> In the February 11, 2002 Order, the Judge found claimant was an owner-operator of a motor vehicle who is precluded from recovering workers compensation benefits under the provisions of K.S.A. 44-503c.

Claimant contends Judge Moore erred. Claimant argues K.S.A. 44-503c does not preclude him from recovering benefits as he was not the exclusive driver of his truck under the terms of the written agreement between claimant and respondent. Moreover, claimant argues the control that respondent exerted over him establishes that he worked for respondent as an employee rather than as an independent contractor for purposes of the Workers Compensation Act. Accordingly, claimant requests the Board to reverse the Preliminary Hearing Order and grant him benefits.

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<sup>1</sup> At the January 23, 2002 preliminary hearing, claimant testified the correct date of accident was October 30, 2001, rather than October 10, 2001, which was the date contained in the Application for Hearing that was initially filed with the Division of Workers Compensation.

The only issues before the Board on this review are:

1. Is claimant an owner-operator of a motor vehicle who is precluded from recovering workers compensation benefits under K.S.A. 44-503c?
2. If not, on the date of accident was claimant working for respondent as an employee or as an independent contractor?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date, the Board finds and concludes:

The Preliminary Hearing Order should be affirmed. The Board affirms the Judge's conclusion that K.S.A. 44-503c precludes claimant from recovering workers compensation benefits from respondent and its insurance carrier.

Individuals who own and operate a truck or tractor and who lease their equipment to a licensed motor carrier are precluded from recovering workers compensation benefits from that motor carrier if (1) the individual is covered by an occupational accident insurance policy and (2) the individual is not treated as an employee for purposes of federal social security and old age health insurance, and federal taxes. K.S.A. 44-503c(a)(1) provides:

Any individual who is an owner-operator and the exclusive driver of a motor vehicle that is leased or contracted to a licensed motor carrier shall not be considered to be a contractor or an employee of the licensed motor carrier within the meaning of K.S.A. 44-503 . . . or an employee of the licensed motor carrier within the meaning of subsection (b) of K.S.A. 44-508 . . . if the owner-operator is covered by an occupational accident insurance policy and is not treated under the terms of the lease agreement or contract with the licensed motor carrier as an employee for purposes of the federal insurance contribution act, . . . the federal social security act, . . . the federal unemployment tax act, . . . and the federal statutes prescribing income tax withholding at the source. . .

Claimant argues that he was not the exclusive driver of the truck that he leased to respondent as others could have driven it according to the terms of the lease agreement. Although that may be a correct interpretation of the parties' agreement, the evidence indicates that only claimant drove the tractor that he leased to respondent. The evidence also establishes that claimant is covered by an occupational accident insurance policy as a copy of that policy was introduced at the preliminary hearing. Accordingly, claimant may not recover benefits from respondent or its insurance carrier for injuries received in the October 30, 2001 accident.

**WHEREFORE**, the February 11, 2002 Preliminary Hearing Order denying claimant's request for benefits is affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of April 2002.

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BOARD MEMBER

c: Roger D. Fincher, Attorney for Claimant  
Daniel L. Doyle, Attorney for Respondent and its Insurance Carrier  
Bruce E. Moore, Administrative Law Judge  
Philip S. Harness, Workers Compensation Director